



MCAD FACT SHEET

GENDER IDENTITY PROTECTIONS FAQ



On July 1, 2012, Massachusetts General Laws Chapter 151B was amended to prohibit discrimination in employment, housing, lending, credit and mortgage services based on an individual's gender identity. This Fact Sheet is designed to educate Massachusetts citizens about their rights and obligations under the law.

Q: What is "gender identity"?

A: "Gender identity" is "a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth." Gender identity is an individual's sense of being male or female. G.L. c. 151B protects individuals who are transgender. The statutory definition of gender identity does not require the individual to have undergone transitional surgery or intend to undergo surgery, nor does it require evidence of past medical care or treatment. Gender identity is not the same as sexual orientation. Gender identity refers to one's internal sense of her/his own gender and how she/he expresses that gender. The law also protects persons whose gender identity is consistent with their assigned sex at birth, but who do not adopt or express traditional gender roles, stereotypes or cultural norms.

Q: Is it unlawful for a supervisor at a work-site to deny job assignments because an individual does not fit traditional gender roles?

A: Yes. It is an unlawful discriminatory practice for an employer,¹ or its employee or agent, to discriminate against any employee or applicant for employment based upon gender identity with regard to recruitment, hiring, firing, discipline, promotion, wages, job assignments, training, benefits, and other terms and conditions of employment. It is unlawful to harass an employee based on gender identity. Harassment may include, but is not limited to, unwelcome verbal or physical conduct, including but not limited to, derogatory comments, jokes, drawings or photographs, touching or gestures.

Q: Is it unlawful for a landlord to refuse to rent to a transgender individual?

A: Yes. Except for certain categorical statutory exclusions, G.L. c. 151B, makes it an unlawful discriminatory practice for an owner, lessor, managing agent or other person having the right to sell, rent or lease or approve the sale, rental or lease of housing, to refuse to sell, rent, lease, approve the sale, rental or lease, or otherwise deny or withhold housing, or an interest therein, or otherwise discriminate against any person because of his or her gender identity. In addition, real estate brokers, real estate salespersons, and employees or agents thereof, may not discriminate on the basis of gender identity. Prohibited behavior includes all aspects of real property transactions, such as the refusal to show, rent or sell real property that is available for sale or lease, and the refusal to provide services or make repairs or improvements for any tenant or lessee based on gender identity.

¹An employer is generally defined under G.L. c. 151B as one that employs six or more persons or state and municipal employers, regardless of the number of people employed.

Q: Is it unlawful for a bank to decline to provide a mortgage to a transgender individual who had a name change?

A: Yes. It is unlawful to decline to provide a mortgage based on gender identity. Banks or other lending institutions may not discriminate against an applicant for credit on the basis of gender identity. Similarly, a credit card company may not refuse to issue a credit card because an applicant previously identified as a different gender.

Q: Is it unlawful for an employer to have restrooms designated by gender?

A: No. However, if an employee asks to use a specific restroom consistent with his/her gender identity, that employer's denial of permission to use the bathroom of one's identifying gender could be viewed as discriminatory, as the employee is being subjected to different terms and conditions of employment based on her/his gender identity.

Q: Will the MCAD investigate a case in which a transgender individual is denied access to a place of public accommodation because of gender identity?

A: Yes. The MCAD investigates and has issued probable cause findings, in claims against places of public accommodation, such as restaurants, where the claim was consistent with c. 151B's proscription against discrimination -- based on gender, disability and/or perceived sexual orientation in a place of public accommodation. For example, a hotel may not refuse to host a conference of transgender individuals, nor may a restaurant refuse to seat a group of transgender patrons on the grounds that they will "draw too much attention from other patrons," as this may constitute discrimination based on gender or perceived sexual orientation.

Q: What should I do if I feel I have been discriminated against on the basis of my gender identity?

A: If you feel you have been discriminated against, you may file a charge of discrimination with the Massachusetts Commission Against Discrimination. For more information, visit our website www.mass.gov/mcad/ or one of the offices below.

Q: What if I signed an employment contract when I was hired that only allows me to arbitrate my claims?

A: An agreement with your employer to arbitrate your discrimination claim(s) does not bar you from filing a charge of discrimination.

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For more information, please visit our website: www.mass.gov/mcad/